



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0641]

RIN 1625-AA00

Safety Zone; Port Valdez, Alaska Maritime Highway System  
Ferry Terminal

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters within a 200-yard radius of the Alaska Marine Highway System (AMHS) Terminal in Port Valdez when an AMHS Ferry is arriving or departing when there is an ongoing fishing opener that includes the navigable waters within a 200-yard radius of the AMHS Ferry Terminal. This safety zone is necessary to provide for the safety of passenger vessels and fishing vessels in the area during periods of increased vessel traffic. The purpose of the safety zone is to restrict non-ferry vessel traffic from entering a 200-yard radius of the AMHS Ferry Terminal while the ferry is within 200-yards of the pier. Persons desiring to transit within these

safety zones must contact the Captain of the Port, Prince William Sound, Alaska or the designated on scene representative on VHF channel 13 (156.650 MHz) to receive permission.

DATES: This temporary final rule will remain in effect from July 8, 2012, until August 1, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (COTP Prince William Sound USCG-2012-0641) and are available for inspection or copying at USCG Marine Safety Unit Valdez Office, Valdez, AK between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Danielle Wiley, Chief, Waterways Management, USCG Marine Safety Unit Valdez, at (907) 835-7223, e-mail [danielle.f.wiley@uscg.mil](mailto:danielle.f.wiley@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision

authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because fishing openers in Prince William Sound, which includes the Port of Valdez, are announced the evening before the opener by the Alaska Department of Fish and Game, which does not afford time for public feedback on a safety zone that will be in effect only when that opener includes the area of Port Valdez that includes the AMHS Terminal.

In the past, during the month of July, the Alaska Department of Fish and Game has announced fishing openers in the Port of Valdez with less than less than 24-hours advance notice. Furthermore, there have been instances when ferries arriving/departing the AMHS Ferry Terminal have encountered fishing vessels holding station and setting nets in positions that created safety hazards for the passenger vessels that were trying to safely maneuver to and from the pier. Any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest, since immediate action is

needed to provide for the safety of life and property on navigable waters during these fishing openers.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds, for the reasons noted above, that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

#### Basis and Purpose

The legal basis for this rule is 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1. which collectively authorize the Coast Guard to define regulatory safety zones.

The safety zone is necessary to protect all vessels operating in the vicinity of the AMHS Ferry Terminal. The safety zone will terminate whenever a departing ferry vessel is more than 200 yards from the AMHS Ferry Terminal. The safety zone will also terminate whenever an arriving ferry vessel moors to the pier. The impact of this rule on commercial and recreational traffic is expected to be minimal because of the limited area and duration of the safety zone.

#### Discussion of Rule

The Coast Guard is establishing a temporary 200-yard

safety zone around the AMHS Ferry Terminal at position 61°07'26"N and 146°21'50"W in the navigable waters of Port Valdez. The zone will only be in effect when a ferry vessel is within 200 yards of the AMHS Ferry Terminal, between July 3, 2012, and August 1, 2012, and when there is an Alaska Department of Fish and Game fish opener that includes the 200-yard radius surrounding the AMHS pier. The limited size and duration of the zone is designed to minimize the impact on other vessels transiting the waters of Port Valdez.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12886, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This finding is

based on the limited size and duration of the safety zone which will have minimal, if any, impact on vessels transiting the waters of Prince William Sound and Port Valdez.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The ruling will affect the following entities, some of which may be small entities: recreational, ferry, and fishing vessels for very short periods of time and improve the safe operations for all parties involved by reducing risk to life and property. This rule will only be enforced during an AMHS ferry's arrival or departure from the AMHS Ferry Terminal from July 3, 2012, until August 1, 2012, and from the time a fish opener begins until it expires.

Vessel traffic can pass safely around the zone. Before the effective period, we will issue maritime advisories widely available to users of Port Valdez via VHF CH 13. Broadcast Notice to Mariners will also be made on CH 16. All indications are that there will be minimal impact to small entities.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) .

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property



This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of

materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g) of the Instruction. Under figure 2-1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" have been completed and are available in the docket where indicated under Addresses.

## List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

AUTHORITY: 33 U.S.C 1231; 46 U.S.C Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T17-0641 to read as follows:

§ 165.T17-0641 Safety Zone; Port Valdez, Alaska Marine Highway System Ferry Terminal.

(a) Location. The following area is a safety zone:  
The navigable waters within a 200-yard radius of the Alaska Marine Highway System Ferry Terminal in the Port of Valdez.

(b) Effective period. The safety zone in this section will be enforced from July 8, 2012, through August 1, 2012, when there is an Alaska Marine Highway System Ferry within the safety zone and there is a fishing opener that includes

the navigable waters within the safety zone during these dates.

(c) Regulations. For the purpose of this section, the general regulations contained in 33 CFR 165.23 apply to all but the following vessels in the areas described in paragraph (a), (b), or (c):

(1) Alaska Marine Highway System Ferries.

(2) Vessels that obtain permission through the Duty Officer at Marine Safety Unit Valdez, who can be contacted at (907) 831-0236.

(3) Vessels that obtain permission from the Captain of the Port, who may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

Dated: July 8, 2012

B. J. Hawkins

Commander, U. S. Coast Guard

Captain of the Port, Prince William Sound

[FR Doc. 2012-18453 Filed 07/27/2012 at 8:45 am;  
Publication Date: 07/30/2012]